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7 Debtor In Pro Per

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In Re VINH NGUYEN,
Debtor

Case No. 22-50907

Chapter 7

**EX-PARTE MOTION TO REOPEN CASE
TO ALLOW DEBTOR FILE A MOTION TO
ENFORCE SETTLEMENT AGREEMENT**

[11 U.S.C. § 350(b); FRBP §5010]

Before: Hon. M. Elaine Hammond

TO THE HONORABLE COURT: NOW COMES Debtor Vinh Nguyen aka Vince Nguyen (hereinafter referred to as “Debtor”), In Pro Per, to file the instant Ex Parte Motion to Reopen Case to Allow Debtor to File a Motion to Enforce Settlement Agreement (“Ex Parte Motion”).
As grounds for the Ex Parte Motion, Debtor states as follows:

1. On 10/04/2022, when Debtor was a co-owner of the real property located at 12329 Kosich Place, Saratoga, CA 95070 (“Property”), he petitioned for Chapter 13, which was later converted to Chapter 7, in this court.
2. On 01/11/23, in the subject Chapter 7 case, Debtor entered into a Global Settlement

1 Agreement (“Settlement Agreement”) with secured creditor Paul Nguyen (“Mr. Paul”)¹, and
2 others. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement.

3 3. Clause 17 in the Settlement Agreement provides:

4 “... Upon receipt of the Creditor Proceeds, the Claims shall be deemed withdrawn
5 for all purposes. No later than three (3) business days after Creditor receives the
6 Creditor Proceeds, he shall (a) withdraw any and all Notices related to the
7 Residence..., and any others that are not listed...”

8 4. Before the dispute came to this court, and while the Property in subject had been in
9 his foreclosure process, Mr. Paul and his foreclosing trustees have recorded a number of notices
10 such as Notice of Default, Notice of Trustee Sale, etc., on the Property.

11 5. Back to present, the Creditor Proceeds was delivered to Mr. Paul on 01/18/23, as
12 provided in the Settlement Agreement.

13 6. After the money was delivered to Mr. Paul, in a few times, then Debtor’s lawyer
14 Arasto Farsad has requested Mr. Paul to issue the withdrawals as provided in Clause 17. No
15 definite answer was received.

16 7. As of today, the said notices still show on the title of the Property. Under this
17 circumstance, it appears the only approach available is a motion to enforce settlement agreement.

18 8. On 12/11/23, Debtor was substituted in as In Pro Per. (**Case 22-50907 Docket, Doc #**
19 **230**).

20 9. Being In Pro Per, on the same day 12/11/23, Debtor promptly filed a Notice to File
21 Motion to Enforce Settlement Agreement. (***Id.*, Doc # 232.**)

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26 ¹ Both parties have the same last name “Nguyen” but they are not related. The last name therefore is
27 not used to prevent possible confusion. This is not intended to be a lack of respect.

10. Coincidentally on the same day 12/11/23, the Court posted the Final Decree to
1
Close the case (*Id.*, Doc # 231.).
2

3 11. Debtor is now seeking the reopening of the subject case, for the Motion to Enforce
4 Settlement Agreement to be filed.
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6 12. 11 U.S.C. §350(b) provides: "[a] case may be reopened in the court in which such
7 case was closed to administer assets, to accord relief to the debtor, or for other cause."]
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9 13. Bankruptcy court may consider the following factors in evaluating whether to
10 reopen a case: (i) the benefit to creditors; (ii) the benefit to debtor; (iii) the prejudice to affected
11 parties; (iv) the availability of relief in other forums; (v) whether the estate has been fully
12 administered; (vi) the length of time between the closing of the case and the motion to reopen;
13 and (vii) good faith².
14

15. A non-compliance on Clause 17 of the Settlement Agreement means the
16 agreement has not been completely performed. In turn, the estate has not been fully
17 administered.
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19 15. This Motion to Reopen Case is filed only a few days from the "final decree" date
20 12/11/23.
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22 16. The foreclosure-related notices have created cloud on title which is very
23 prejudicial to the property owner. For example, the property is uninsurable when its owner seeks
24 to refinance or to sell it.
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25 ² *In re Consol. Freightways Corp.*, 553 B.R. 396,399 (C.D. Cal. 2016), appeal dismissed sub nom. *In re*
26 *Consol. Freightways Corp. of Delaware*, 2017 WL 3270851 (9th Cir. Jan. 26, 2017); *In re Judson*, 586
B.R. 771, 773(Bankr. C.D. Cal. 2018).
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17. There is no alternative remedy available from any other forum.

18. Granting the reopening by the court will not cause a loss on any party.

19. In summary, the estate has not been fully administered as of 12/11/23; and only a
few days have passed from that date until this motion is filed; the property owner is now
prejudicial because of the cloud created by the existence of those notices; and finally beside the
court, there is no other forum the owner can go to seek help. Movant respectfully prays the court
to grant the reopening of the case, so that the Motion to Enforce the Settlement Agreement can
be filed.

10. Respectfully,

11. /s/Vinh Nguyen

12. Vinh Nguyen
13. Debtor In Pro Per